

COMPLAINT FOR DAMAGES

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California and the County of Orange, and is in good standing with the Secretary of State of the  
virtue of the laws of the State of California, and is qualified to do business in the State of  
1. Plaintiff TRICOR is a corporation duly organized and existing under and by

GENERAL ALLEGATIONS

action against defendants and each of them alleges as follows:  
Plaintiff TRICOR AMERICA, INC. (hereinafter referred to as "TRICOR"), for causes of

COMPLAINT FOR DAMAGES FOR:

1. Breach of Contract
2. Account Stated
3. Quantum Meruit
4. Negligent Misrepresentation

Plaintiffs,  
TRICOR AMERICA, INC., a California  
corporation,  
vs.  
DHL CANADA EXPRESS, LTD. a Canadian  
corporation; LOOMIS CANADA HOLDING  
COMPANY, INC., a Canadian corporation; and  
DOES 1 through 25, inclusive.  
Defendants.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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TRICOR AMERICA, INC.

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NORTHERN DISTRICT OF CALIFORNIA

Case No.: 07-4949  
CRB

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## COMPLAINT FOR DAMAGES

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1 State of California. TRICOR maintains its principal place of business in the City of South San  
 2 Francisco, in the County of San Mateo, California.  
 3  
 4 2. Plaintiff is informed and believes, and thereupon alleges, that defendant DHL  
 5 EXPRESS (CANADA), LTD. (hereinafter referred to as "DHL EXPRESS") is corporation  
 6 organized and existing under and by virtue of the laws of the nation of Canada.  
 7  
 8 3. Plaintiff is informed and believes, and thereupon alleges, that defendant LOOMIS  
 9 CANADA HOLDING COMPANY, INC. (hereinafter referred to as "LOOMIS") is a  
 10 corporation organized and existing under and by virtue of the laws of the nation of Canada.  
 11  
 12 4. The true names and capacities, whether individual, corporate, associate or  
 13 otherwise of the defendants named herein as DOES 1 through 25, inclusive, and each and all of  
 14 them are unknown to TRICOR at this time, and TRICOR therefore sues said defendants and each  
 15 and all of them, by such fictitious names, and TRICOR will advise this Court and seek leave to  
 16 amend this Complaint when the names and capacities of each such defendant have been  
 17 ascertained. TRICOR is informed and believes, and thereupon alleges that each said defendant  
 18 herein designated as a DOE defendant is responsible in some manner for the events and  
 19 happenings herein referred to, or as hereinafter alleged.  
 20  
 21 5. TRICOR is informed and believes and thereupon alleges, that at all times herein  
 22 mentioned, each and every defendant, including DOES 1 through 25, inclusive, and each of  
 23 them, was, were, and yet are the agents or employees of the other named defendants and each of  
 24 them, that in so doing the things herein alleged said defendants, and each and all of them, were  
 25 acting in within the course and scope of the authority conferred by, and with the consent of, each  
 26 other defendant, and all of them jointly.  
 27  
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## COMPLAINT FOR DAMAGES

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concessions from TRICOR.

146,193.26 payment, with the sole purpose of creating economic leverage to attempt to negotiate continued to order courier services from TRICOR with the intention of withholding the \$

11. TRICOR is informed and believes that the Defendants knowingly and willfully the Agreement. The Defendants refused to pay \$146,193.26 without any explanation.

due under the Agreement for courier services ordered and provided to it by TRICOR pursuant to DOES 1 through 25, and each of them, breached the Agreement by failing to pay \$ 146,193.26

10. Yet on or about January 1, 2007, and continuing to date, the Defendants and the Agreements.

9. TRICOR performed all conditions covenants, and promises required of it under the agreed-upon credit terms.

8. Since entering into the Agreement, TRICOR has received numerous orders for courier services from the Defendants, and has provided services to the Defendants pursuant to

incorporated herein by this reference as though fully set forth.)

representative example of the sales contract is attached hereto as Exhibit "A", and is

the Agreement contained the same terms and conditions. (A true and correct copy of a request from the Defendants. Each written sales contract issued to the Defendants pursuant to

("Agreement"). Pursuant to the Agreement, TRICOR issued written purchase orders for each Defendants agreed to pay of the courier services pursuant to agreed upon credit terms

7. On or about March 2, 1984, TRICOR, on the one hand, and DHL CANADA and LOOMIS entered into an agreement wherein TRICOR agreed to provide courier services to the

were set forth in full herein.

6. By this reference, TRICOR herein incorporates each and every allegation of paragraphs 1 through 5, inclusive of the General Allegations of this Complaint as if the same

Against Defendants DHL EXPRESS AND LOOMIS And Does 1 Through 25

(Breach of Contract)

FIRST CAUSE OF ACTION

COMPLAINT FOR DAMAGES

28 paragraphs 1 through 17, inclusive, of this Complaint as if the same were set forth in full herein.  
 27 4

26 **23. By this reference, TRICOR herein incorporates each and every allegation of**  
 25 **Against DHL EXPRESS and LOOMIS And Does 1 Through 25**  
 24 **(Quantum Meruit)**

23 **THIRD CAUSE OF ACTION**

22 pursuant to California Civil Code Section 1717.  
 21 rights under the Agreements. TRICOR is entitled to reasonable attorneys' fees and costs  
 20 incurred attorneys' fees and costs, and will continue to incur said fees and costs to enforce its  
 19 17. By reason of the conduct of said defendants, and each of them, TRICOR has  
 18 with interest thereon at the legal rate.

17 now due, owing, and unpaid from said defendants to TRICOR the sum of \$ 146,193.26, together  
 16 16. As a result, due to said defendants' breach of the Agreements as aforesaid there is  
 15 agreed balance has been paid.

14 15. Although demanded of the Defendants, neither the whole nor any part of the  
 13 balance.

12 due to TRICOR from said defendants. Defendants and each of them agreed to pay TRICOR said  
 11 Defendants and Does 1 through 25 and on such statement a balance of \$ 146,193.26 was found

10 California, an account was stated in writing by and between TRICOR and defendants the  
 9 14. Within four years before the commencement of this action, at San Mateo,  
 8 paragraphs 1 through 12, inclusive of this Complaint as if the same were set forth in full herein.

7 13. By this reference, TRICOR herein incorporates each and every allegation of  
 6 **Against DHL EXPRESS, LOOMIS And Does 1 Through 25**

5 **(Account Stated)**

4 **SECOND CAUSE OF ACTION**

3 12. As a result, due to the breach of the Agreement by defendants and each of them,  
 2 TRICOR has been damaged in the sum of \$ 146,193.26, and more according to proof.



## COMPLAINT FOR DAMAGES

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assurances, TRICOR would not have continued to perform services for the Defendants.  
were false and that the Defendants had no intention of fulfilling its promises, representations and  
assurances to be true. Had TRICOR known that the promises, representations, and assurances  
assurances that payment would be made, TRICOR believed the promises, representations, and  
assurances that the Defendants conveyed its promises, representations and  
29. At the time that the Defendants conveyed its promises, representations and  
behalf.

compensate TRICOR for the services it rendered to the Defendants' clients on the Defendants'  
such representations to be true, as the Defendants had no intention of making any payment to  
assurances that payment would be made, the Defendants had no reasonable grounds for believing  
assurances that the Defendants conveyed its promises, representations, and  
28. At the time that the Defendants conveyed its promises, representations, and  
TRICOR.

false, as the Defendants had no intention of making payment for the services rendered by  
assurances that the Defendants would pay for the services rendered, such representations were  
27. At the time that the Defendants conveyed its promises, representations and  
assurances that the Defendants conveyed its promises, representations and  
26. By this reference, TRICOR herein incorporates each and every allegation of  
paragraphs 1 through 25, inclusive, of this Complaint as if the same were set forth in full herein.

**Against DHL EXPRESS And Does 1 Through 25**  
**(Negligent Misrepresentation)**

**FOURTH CAUSE OF ACTION**

of them, to TRICOR the sum of \$ 146,193.26.  
therefore has been made, and there is now due, owing and unpaid from said defendants, and each  
25. Neither the whole nor any party of the above sum has been paid, although demand  
of them at the special request and instance of said defendants, and each of them, and no other.  
TRICOR in for an agreed sum of \$ 146,193.26 for serviced rendered to said defendants, and each  
EXPRESS, LOOMIS, DOES 1 through 25, inclusive and each of them became indebted to  
24. Within the last two years, at South San Francisco, California, defendants DHL

COMPLAINT FOR DAMAGES

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Laura E. Nguyen  
Attorney for Plaintiff  
TRICOR AMERICA, INC.

Dated: 9-20-07

1. For damages in the sum of \$146,193.26 and more, according to proof.
2. For prejudgment interest on said sum at the maximum legal rate;
3. For reasonable attorneys' fees;
4. For costs of suit incurred by TRICOR herein; and
5. For such other and further relief as this court may deem just and proper.

**ON ALL CAUSES OF ACTION**

WHEREFORE, plaintiff TRICOR prays for judgment against Defendants and Does 1 through 25, inclusive as follows:

30. As a direct, legal and proximate result of the Defendants' fraudulent conduct and false representations and its failure to pay TRICOR for the services rendered, TRICOR has been damaged in an amount in excess of \$ 146,193.26.